

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Dave Bicking,

Complainant,

vs.

ORDER ON MOTION TO ADMIT  
LATE-FILED EXHIBIT

R.T. Rybak for Mayor,

Respondent.

This matter came on for hearing before a panel of three Administrative Law Judges on July 7, 2009. The OAH hearing record closed at the close of the hearing but for the submission of closing argument briefs, which the panel ordered be filed by July 17, 2009. On July 10, 2009, the Respondent filed this motion to admit a document as a late-filed exhibit. The document is a copy of an email sent by the Complainant to members of the 5<sup>th</sup> District Green Party. On July 14, 2009, the Complainant filed a response objecting to the admission of the proposed exhibit.

Based on the files and records herein,

**IT IS HEREBY ORDERED:**

1. That the Respondent's motion to admit the late-filed exhibit is DENIED.
2. That, pursuant to Minn. Stat. § 211B.35, subd. 3, the panel shall issue its final decision on the matter within 14 days after the hearing record closes on July 17, 2009.

Dated: July 20, 2009.

/s/ Bruce H. Johnson  
BRUCE H. JOHNSON  
Presiding Administrative Law Judge

/s/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER  
Administrative Law Judge

/s/ Patricia J. Milun  
PATRICIA J. MILUN  
Administrative Law Judge

## MEMORANDUM

The Respondent moves for the admission of a copy of an email that the Complainant sent on July 6, 2009, to members of the Minneapolis 5<sup>th</sup> District Green Party. The Respondent contends that the email is relevant because in it the Complainant acknowledges that Councilmember Cam Gordon “was clearly supporting Rybak privately from the beginning,” which the Respondent contends corroborates evidence it offered at the hearing. In addition, the Complainant acknowledges in the email that the filing of the campaign complaint has been a matter of controversy within the Green Party and admits that Cam Gordon discouraged him from filing the complaint, which the Respondent argues is contrary to the Complainant’s sworn testimony at the hearing. The Respondent asserts that it did not become aware of the email until July 8, 2009, the day after the hearing.

The Complainant objects to the admission of the email as untimely and further argues that the email contains no new information that would bear on the issues in the case. The Complainant also states that should the Panel permit the admission of the email as a late-filed exhibit, he would request additional time to prepare a response.

The hearing record in this matter closed when the hearing adjourned on July 7, 2009, but for the submission of written closing arguments. The panel concludes that, in addition to being late, the email does not present any new information that would bear on the ultimate issue in this case, which is, did the Respondent violate Minn. Stat. § 211B.02 by failing to get written permission from Cam Gordon before disseminating written material that Mr. Gordon supported or endorsed Mayor Rybak’s campaign for re-election? For these reasons, the Respondent’s motion to admit the copy of Complainant’s July 6<sup>th</sup> email as a late-filed exhibit is denied.

P.J.M.

B.H.J., B.J.H.,